IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1863 OF 2006

Madhuri Prabhakar Patole. ...Petitioner.

Vs.

Aruna Satishchandra Gaikwad. ...Respondent.

.....

Mr.T.D.Deshmukh for the Petitioner.

Mr.Surel Shah for the Respondent.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 22, 2006.

P.C. :

Rule, by consent of Counsel returnable forthwith. By consent of Counsel and at their request taken up for hearing.

The Petitioner was initially appointed as an Assistant Teacher in the Woronko Primary School which is run by the Marathi Mission which is stated to be a Society established and administered by a linguistic minority under Article 30 of the Constitution of India. The Headmistress, Mrs.Kamal

B.Dushing, retired on 28th February 2004. The Executive Committee is stated to have resolved to promote the Petitioner to the post of Headmistress from 1st March 2004. An application was made to the Administrative Officer by the Management on 27th February 2004. The Administrative Officer accorded sanction on 9th June 2004 which was followed by a communication of the Deputy Director of Education of 12th September 2004, taking note of the appointment of the Petitioner. This was in view of the provisions of Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, which provides that the Act shall not apply to the recruitment of the Head of a minority school and any other persons not exceeding three who are employed in such school and whose names are notified by the management to the Director of Education or the Deputy Director of Education for this purpose. Hence, a note was taken of the selection, since the question of approval did not arise.

The contention of the Petitioner is that

she was competent to work in the capacity of Headmistress and all the relevant bills were issued to the pay unit of the concerned authorities with the signature of the Petitioner in the capacity of a Headmistress. Thereafter, certain disputes occurred in the management. The Respondent moved the School Tribunal challenging the appointment of the Petitioner. On an objection raised by the Petitioner to the maintainability of the appeal, the Tribunal by an order dated 19th July 2005 held that the appeal was not maintainable. Thereupon the Respondent instituted a suit before the Civil Judge, Senior Division, Solapur seeking a declaration that she is the Headmistress of the School and that the Petitioner is not the Headmistress. A permanent injunction was sought against the Petitioner from interfering with the work of the Respondent as a Headmistress. The Trial Court held that it had jurisdiction to entertain and try the suit, on 24th January 2006, and on the same day issued an ad-interim injunction restraining the Petitioner from interfering with the work of the Respondent.

The Petitioner moved an appeal before the Additional District Judge, Solapur who dismissed the appeal by the impugned order dated 28th February 2006.

Now ex-facie the facts of the present case would show that the dispute cannot be characterised as a dispute between only the Petitioner and the Respondent. The question related to the appointment of the Headmistress of the School and it does not require any degree of elaboration to demonstrate that in such a dispute the management was both a necessary and proper party.

The Respondent moved the Trial Court for a declaration that she was a duly appointed Headmistress and sought an injunction against the Petitioner. No such relief could have been granted in the absence of the management. Unfortunately, however, the Trial Court proceeded to grant an interim injunction which was confirmed by the Additional District Judge. The Additional District Judge seems to have proceeded on the basis that no approval was granted to the appointment of the

Petitioner but the facts of the present case are otherwise. There is sufficient material available on the record to show that due note of the appointment was taken by the Administrative Officer of the Primary Education Board, Solapur and on 12th September 2004 by the Deputy Director of Education. It appears that on 7th September 2004 the Petitioner has now been informed by the management that the management is taking a decision to appoint the Respondent and that the proposal in respect of the Petitioner has been withdrawn from the Administrative Officer of the School Board. The contention of the Petitioner is there are disputes in the management and this letter has been issued by one faction of the management. It is not necessary to express any view in this regard. In so far as the alleged withdrawal of the order appointing the Petitioner is concerned, it is needles to add that the present order is without prejudice to such remedies which are available for the Petitioner to challenge the aforesaid order. The basic issue is as to whether an injunction of the nature which has been granted in the present case should have been granted in the absence of the

management. Clearly no such order should have been passed in the absence of the management. The orders passed by both the Courts below suffer from a fundamental infirmity and are liable to be quashed and set aside. The Petition will have to be allowed.

The Petition is allowed and the impugned order of the Additional District Judge dated 28th February 2006 is quashed and set aside. It would be open to the Respondent to move an application for impleading the management and upon such application being granted, it is needless to add that the Respondent would be at liberty to adopt further proceedings. This would be without prejudice to such objections as the Petitioner or the management may have in regard to the maintainability of the proceedings.

.....